



NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:

ETHEL MATTHEWS,

Debtor.

Case No. 2:08-bk-15641-RK

Chapter 7

**MEMORANDUM DECISION ON DEBTOR'S
FIRST AMENDED MOTION FOR
PERMANENT INJUNCTION FOR ALLEGED
VIOLATIONS OF AUTOMATIC STAY AND
DISCHARGE INJUNCTION**

Date: May 16, 2017

Time: 3:00 p.m.

Place: Courtroom 1675
Roybal Federal Building
255 East Temple Street
Los Angeles, California

This bankruptcy case came on for hearing before the undersigned United States Bankruptcy Judge on May 16, 2017 on the "First Amended Motion for Permanent Injunction in Violation of Automatic Stay 11 U.S.C. § 362, and § 501, Discharged Injunction § 524 and Creditors Fraudulent Misconduct" ("First Amended Injunction Motion"), filed by Debtor Ethel Matthews ("Debtor") on February 21, 2017 (Docket No. 116). At the hearing on May 16, 2017, Debtor appeared for herself, Steven M. Daily, of

1 the law firm of Kutak Rock LLP, appeared for Respondents Select Portfolio Servicing,
2 Inc. ("SPS) and Mortgage Electronic Registration Systems, Inc. ("MERS"), Bryant S.
3 Delgadillo, of the law firm of Parker Ibrahim & Berg LLC, appeared for Respondent
4 JPMorgan Chase Bank, N.A. ("Chase") and Diane M. Luczon, of the law firm of Early
5 Sullivan Wright Gizer & McRae LLP, appeared for Respondent Stewart Title Guaranty
6 Company ("Stewart"). No other appearances were made.
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8 **PROCEDURAL BACKGROUND**

9 On April 27, 2008, Debtor commenced this bankruptcy case by filing a voluntary
10 petition for relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C. On May 15,
11 2009, the court entered an order granting relief from the automatic stay as to Chase
12 Home Finance, as servicing agent for MERS, solely as nominee for Resmae Mortgage
13 Corporation relating to the real property located at 100 East Newby Ave., #1, San
14 Gabriel, California, 91776 (Docket No. 78). By order entered on June 11, 2009,
15 Debtor's bankruptcy case was converted to a case under Chapter 7 of the Bankruptcy
16 Code (Docket No. 83). On May 3, 2011, the court entered an order for discharge of
17 debt in this bankruptcy case (Docket No. 109), and on July 8, 2011, the court closed the
18 bankruptcy case (Docket No. 111).
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21 On February 1, 2017, Debtor filed her original "Motion for Permanent Injunction in
22 Violation of Automatic Stay 11 U.S.C. § 362, and § 501 Discharged Injunction § 524 and
23 Creditors Misconduct" ("Injunction Motion") (Docket No. 113). On February 3, 2017, the
24 court issued an order on the Injunction Motion, which required Debtor to file a signed
25 signature page for the Injunction Motion on or before February 28, 2017 (Docket No.
26 114). On February 21, 2017, Debtor filed her motion to reopen the bankruptcy case and
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1 her "First Amended Motion for Permanent Injunction in Violation of Automatic Stay 11
2 U.S.C. § 362, and § 501, Discharged Injunction § 524 and Creditors Fraudulent
3 Misconduct" ("First Amended Injunction Motion"), which included a signed signature
4 page (Docket No. 116). By order entered on February 28, 2017, the court reopened this
5 bankruptcy case (Docket No. 117).
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7 Having reviewed Debtor's motion to reopen the bankruptcy case and the First
8 Amended Injunction Motion and supporting evidence, the court construed the First
9 Amended Injunction Motion as a motion for issuance of an order to show cause under
10 Local Bankruptcy Rule 9020-1 which governs contempt proceedings for violations of
11 court orders or directives, such as the automatic stay under 11 U.S.C. § 362 and the
12 discharge injunction under 11 U.S.C. § 524, and the court issued its order to show
13 cause ("OSC") (Docket No. 117), ordering MERS, Chase, SPS, U.S. Bank National
14 Association, Stewart, Albertelli Law Group and Quality Loan Service Corporation
15 ("Respondents") to file a written explanation as to why they should not be held liable for
16 any willful violation of the automatic stay under 11 U.S.C. § 362 and the discharge
17 injunction under 11 U.S.C. § 524 and in civil contempt and set the First Amended
18 Injunction Motion for a hearing on May 16, 2017.
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21 On May 16, 2017, the court conducted a hearing on the First Amended Injunction
22 Motion and heard argument from the parties. The court then took the matter under
23 submission. The court has considered the evidence on the First Amended Injunction
24 Motion, including the contents of the motion as verified by Debtor in the Verification
25 attached to the motion and the exhibits also attached to the motion, the declaration of
26 Mark Syphus, a document control officer for SPS, and SPS's request for judicial notice
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1 and exhibits attached thereto. The court notes that there were no objections to any of
2 the evidence offered by the parties, including the verified motion and the exhibits
3 attached thereto and the declaration of Mr. Syphus, and the request for judicial notice
4 and exhibits attached thereto, and the court has considered all of these evidentiary
5 matters in its consideration of the motion. The authenticity and relevance of the
6 documents relating to Debtor's loan transaction involving the subject real property, such
7 as the deed of trust, the assignments of deed of trust, notices of trustee's sale,
8 correspondence between debtor and the loan servicers, are undisputed. As discussed
9 below, the court has accorded the appropriate weight to each item of evidence and
10 each of the judicial notice matters.
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13 Having considered the evidence on the First Amended Injunction Motion and
14 related pleadings of the parties, the court hereby determines that the material facts are
15 uncontroverted, see Local Bankruptcy Rule 9020-1(f) ("At the hearing, the court may
16 treat as true any uncontroverted facts established by declaration and limit testimony to
17 controverted facts only."), that Debtor has not established her claims asserted in the
18 First Amended Injunction Motion by the appropriate standard of evidence that the
19 Respondents violated the automatic stay and discharge injunction in this case and has
20 not effectuated proper service of process on several respondents, and that therefore,
21 the First Amended Injunction Motion, and all of the claims asserted therein, should be
22 denied.
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ANALYSIS

The court determines that Debtor has not proven that Respondents acted in violation of the automatic stay under 11 U.S.C. § 362(k) or in contempt of court.

“As soon as a bankruptcy case is filed, an *automatic stay* immediately goes into effect and generally prevents creditors (and other parties) from taking most actions against property of the bankruptcy estate, the debtor, and the debtor’s property.” 2 March, Ahart and Shapiro, *California Practice Guide: Bankruptcy*, ¶ 8:1 at 8(l)-1 (2016) (emphasis in original), *citing*, 11 U.S.C. § 362. “This ‘blanket injunction’ continues until a bankruptcy court order lifting the stay has been entered or the stay has expired.” *Id.*

The automatic stay as to property of the bankruptcy estate applies once the bankruptcy case is filed until such property is no longer property of the estate. 11 U.S.C. § 362(c)(1). Property ceases to be property of the estate when it is abandoned. 2 March, Ahart and Shapiro, *California Practice Guide: Bankruptcy*, ¶ 8:1 at 8(l)-1 (emphasis in original), *citing inter alia*, 11 U.S.C. § 554 and *In re D. Papagni Fruit Co.*, 132 B.R. 42, 45 (Bankr. E.D. Cal. 1991). “Unadministered property scheduled by the debtor under 11 U.S.C. § 521(a)(1) is *automatically abandoned* back to the debtor when the case is closed *unless the court orders otherwise*.” 2 March, Ahart and Shapiro, *California Practice Guide: Bankruptcy*, ¶ 6:440 at 6-44 (emphasis in original), *citing inter alia*, 11 U.S.C. § 554 and *In re Menk*, 241 B.R. 896, 911 (9th Cir. BAP 1999). In this bankruptcy case, the automatic stay as to the property of the bankruptcy estate, including the subject real property at 100 East Newby Ave., #1, San Gabriel, California 91776, terminated because this property was automatically abandoned to the debtor when the bankruptcy case was closed on July 8, 2011 since the property scheduled by

1 Debtor on her bankruptcy schedules, including the subject real property at 100 East
2 Newby Ave., #1, San Gabriel, California 91766 listed on Schedule A-Real Property
3 (Docket No. 7 at page 37), were unadministered assets as shown by the Chapter 7
4 Trustee's Report of No Distribution, dated October 27, 2009 as reflected on the case
5 docket on that date, and since the court did not otherwise order that the scheduled and
6 unadministered property of the estate not be automatically abandoned back to Debtor in
7 its case closure order entered on July 8, 2011 (Docket No. 111). Thus, in this
8 bankruptcy case, the automatic stay as to property of the bankruptcy estate, including
9 the real property at 100 East Newby Ave., #1, San Gabriel, California, was in effect from
10 the date Debtor filed her bankruptcy petition on April 27, 2008 until July 8, 2011 when
11 the stay was terminated when the bankruptcy case was closed, resulting in an
12 abandonment of scheduled and unadministered property of the estate to Debtor under
13 11 U.S.C. §§ 362(c)(1) and 554.

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16 The automatic stay applies as to other actions covered under 11 U.S.C. § 362(a),
17 including collection against the debtor personally, once the bankruptcy case is filed until
18 the earliest of (a) the time the case is closed; (b) the time the case is dismissed; or (c)
19 the time a discharge is granted or denied. See 11 U.S.C. § 362(c)(2)(A)-(C). Thus, in
20 this bankruptcy case, the automatic stay as to these other actions covered under 11
21 U.S.C. § 362(a) was in effect from the date Debtor filed her bankruptcy petition on April
22 27, 2008 until May 3, 2011 when Debtor was granted her bankruptcy discharge, at
23 which time the automatic stay terminated under 11 U.S.C. § 362(c)(2)(C). Moreover,
24 the automatic stay applied to Chase from April 27, 2008 until Chase was granted relief
25 from the automatic stay by an order of this court entered on May 15, 2009.
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1 The only time periods in which a violation of the automatic stay could have
2 occurred in this case were: (1) as to property of the estate, from April 27, 2008 through
3 July 8, 2011; (2) as to other actions covered under 11 U.S.C. § 362(a), from April 27,
4 2008 through May 3, 2011; and (3) as to Chase, from April 27, 2008 through May 15,
5 2009.

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7 A willful violation of the automatic stay is shown under 11 U.S.C. § 362(k) if a
8 party knew of the automatic stay, and its actions in violation of the stay were intentional.
9 *Eskanos & Adler, P.C. v. Leetien*, 309 F.3d 1210, 1215 (9th Cir. 2002)(citation omitted;
10 case applied 11 U.S.C. § 362(h), which was redesignated as 11 U.S.C. § 362(k) in
11 2005). Absent actual knowledge or notice of the stay, there is no willful violation of the
12 stay, and damages under 11 U.S.C. § 362(k) are not awardable. *In re Abrams*, 127
13 B.R. 239, 243 (9th Cir. BAP 1991). “A party seeking damages for violation of the
14 automatic stay must prove by a preponderance of the evidence that (1) a bankruptcy
15 petition was filed; (2) the debtor is an individual; (3) the creditor received the notice of
16 the petition; (4) the creditor’s actions were in willful violation of the stay; and (5) the
17 debtor suffered damages.” See *In re Bertuccio*, 414 B.R. 604, 611 (Bankr. N.D. Cal.
18 2008)(citation omitted).

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21 “A party who violates the automatic stay may be held in contempt and the court
22 may award damages to compensate the other party for actual loss suffered.” *In re*
23 *Computer Communications, Inc.*, 824 F.2d 725, 731 (9th Cir. 1987)(citation omitted); see
24 *also*, 11 U.S.C. § 105(a). The moving party has the burden of showing by clear and
25 convincing evidence that the contemnors violated a specific and definite order of the
26 court. *In re Dyer*, 322 F.3d 1178, 1190-1191 (9th Cir. 2003). The automatic stay
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1 qualifies as a specific and definite court order. *Id.*

2 The court has examined the record of evidence submitted by the parties relating
3 to Debtor's First Amended Injunction Motion and finds that the evidence does not prove
4 violations of the automatic stay and discharge injunction in this bankruptcy case under
5 the standards of proof of preponderance of the evidence under 11 U.S.C. § 362(k) and
6 of clear and convincing evidence for civil contempt.
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8 Debtor's claim that Respondent MERS violated "the permanent injunction" of the
9 bankruptcy case for Resmae Mortgage, Debtor's original home lender, on March 3,
10 2008 and April 16, 2008 through assignment of and recording a Deed of Trust, First
11 Amended Injunction Motion at 2, ¶ 5, and at 6, ¶ 4, and Exhibit 5 attached thereto
12 (Debtor's Exhibits were attached to this motion), is not legally cognizable in this
13 bankruptcy case because such claim purports to enforce an order of another court, the
14 Delaware bankruptcy court, in another case, Resmae Mortgage's bankruptcy case,
15 rather than the automatic stay and discharge injunction in this bankruptcy case before
16 this court. These acts occurred before the automatic stay arose in this bankruptcy case
17 when Debtor filed her Chapter 11 bankruptcy petition on April 27, 2008. Moreover,
18 assuming for the sake of argument that the court has authority to enforce the injunction
19 order of the Delaware bankruptcy court, which the court does not, Debtor's claim also
20 lacks merit since there is no evidence how these acts allegedly violated the "permanent
21 injunction" of the Delaware bankruptcy court in the Resmae Mortgage bankruptcy case
22 because Debtor did not offer any evidence of such "permanent injunction."
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26 Debtor's further claim that by these acts, Respondent MERS violated California
27 law, citing, *Glaski v. Bank of America*, 218 Cal.App.4th 1079 (2013), and "MERS
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1 guidelines” on March 3, 2008 and April 16, 2008 through assignment of and recording a
2 Deed of Trust, First Amended Injunction Motion at 2-3, ¶ 6-11, and at 7, ¶ 5, and Exhibit
3 6, is not proven by a preponderance of the evidence that there was any violation of
4 California law on grounds that the assignment of trust deed was transferred late into a
5 Pooling and Servicing Agreement (PSA). Debtor’s evidence does not show how the
6 assignment of trust deed, Exhibit 5, was late or otherwise relates to the PSA since
7 Debtor does not offer a copy of the PSA. Debtor refers to Exhibit 6 as the PSA in the
8 First Amended Injunction Motion at 7, ¶ 5, but that exhibit is only a 4-page excerpt of a
9 SEC Form 8-K, Current Report, for J.P. Morgan Acquisition Trust 2006-HE3, dated
10 November 27, 2006, referring to a Pooling and Servicing Agreement as Attached Exhibit
11 4.1, but Debtor in her Exhibit 6 does not provide a copy of the PSA, the Attached Exhibit
12 4.1. Thus, the court cannot determine whether the assignment of trust deed was “late”
13 as Debtor alleges, so her claim that it violated California law is unsubstantiated. In any
14 event, based on the authorities cited by SPS and MERS, Debtor is precluded by
15 California law from bringing a preemptive pre-foreclosure lawsuit challenging the
16 authority of a foreclosing party’s authority to foreclose on behalf of the holder of a note.
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18 *Response of Respondents Select Portfolio Servicing, Inc., and Mortgage Electronic*
19 *Registration Systems, Inc. (MERS) to Court’s Order to Show Cause re: Contempt on*
20 *Debtor’s First Amended Motion for Permanent Injunction*, filed on April 24, 2017 (Docket
21 No. 132), at 9-11, *citing inter alia*, *Gomes v. Countrywide Home Loans, Inc.*, 192
22 Cal.App.4th 1149, 1155 (2011); *Saterbak v. JPMorgan Chase Bank, N.A.*, 245
23 Cal.App.4th 808, 814-815 (2016) and *Glaski v. Bank of America*, 218 Cal.App.4th at
24 1098-1099.
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1 Respondent MERS had colorable authority to assign the deed of trust to secure
2 the home loan taken out by Debtor as indicated by the evidence, which includes a deed
3 of trust signed by Debtor, which she did not offer into evidence, and the recorded
4 assignments of the deed of trust to U.S. Bank. *Declaration of Mark Syphus in*
5 *Response to Court's Order to Show Cause re: Contempt*, filed on April 24, 2017 (Docket
6 No. 133) at 1-3; *Request of Respondents SPS and MERS for Judicial Notice*, filed on
7 April 24, 2017 (Docket No. 134) at 2-3 and Exhibit A attached thereto; *Debtor's Exhibits*
8 *5, 9 and 10*. Debtor's contention is that the assignments of the deed of trust, including
9 the assignment on March 3, 2008, recorded on April 16, 2008, are invalid because
10 MERS lacked authority to make the assignments, but the deed of trust (i.e., the security
11 instrument for the loan) signed by Debtor indicates that MERS was the designated
12 beneficiary of the deed of trust acting on behalf of the lender, Resmae Mortgage, and
13 thus, on the face of the deed of trust, Debtor had consented to the designation of MERS
14 as the beneficiary of the trust deed with the rights to act on behalf of the lender and its
15 successors, so there does not seem to be any violation of the terms of the deed of trust
16 under California law for MERS to act, including assigning the deed of trust. *Id.* Debtor
17 does not make any claim that the acts relating to the making and recording the
18 assignment of the deed of trust on March 3, 2008 and April 16, 2008 violated the
19 automatic stay because these acts predated the automatic stay arising when the
20 bankruptcy case was filed on April 27, 2008, and besides, an assignment of an interest
21 in a deed of trust and recordation of such assignment are not acts to collect against the
22 debtor or her property which would implicate the automatic stay. *Newman v. Bank of*
23 *New York Mellon*, 2013 WL 1499490, slip op. at *3 (E.D. Cal. 2013); *In re Tucker*, 441
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1 B.R. 638, 646 (Bankr. W.D. Mo. 2010).

2 Debtor also claims that recording the assignment of trust deed without the
3 authorization of the owner of the underlying note is invalid, but cites no legal authority in
4 support of such a claim, and offers no evidence showing that such authorization is
5 lacking in any event. The court thus determines that this claim also lacks merit.
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7 Debtor's claim that the assignment of trust deed violated MERS guidelines, First
8 Amended Injunction Motion at 6, ¶ 2, is not proven by a preponderance of the evidence
9 because she does not offer into evidence the purported MERS guidelines which are
10 allegedly not met here. Thus, the court finds that this claim lacks merit on its face
11 because there is no showing of any kind how the assignment of trust deed violated any
12 internal guidelines of MERS.
13

14 Debtor's claim that violations of the automatic stay are shown by Exhibits 7 and
15 8, Notices of Trustee's Sale, which sales were scheduled for August 19, 2009 and
16 October 13, 2010, recorded on August 7, 2009 and September 22, 2010, First Amended
17 Injunction Motion at 7, ¶ 6, and Exhibits 7 and 8, is not proven by the preponderance of
18 the evidence because Debtor in her First Amended Injunction Motion does not
19 specifically identify any of the Respondents which were responsible for these notices in
20 that she refers to "Defendants, and each of them" were involved. In examining the
21 Notices of Trustee's Sale, Exhibits 7 and 8, the court notes that First American Trustee
22 Servicing Solutions, LLC, formerly known as First American LoanStar Trustee Services,
23 LLC, recorded these notices as the "duly appointed Trustee" of the deed of trust, but
24 this entity was not named as a Respondent in Debtor's First Amended Injunction
25 Motion. Attached to the Notices of Trustee's Sale, Exhibits 7 and 8, were declarations
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1 of Chase Home Finance LLC as loan servicer pursuant to California Civil Code, §
2 2923.54 regarding an exemption for the notice of sale pursuant to California Civil Code,
3 § 2923.53. To the extent that this claim of Debtor relates to Respondent Chase, the
4 claim should be denied because there is no violation of the automatic stay because
5 Chase had previously obtained stay relief from this court as to this property before these
6 notices were recorded. As to the other Respondents, Debtor offers no evidence relating
7 any of them to these notices, so there is no valid claim based on these notices as to
8 them. Moreover, Debtor's claim based on these notices should be denied because
9 Debtor offers no evidence of any damages from the notices of Trustee's sale since
10 neither sale occurred.
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13 Debtor's claim alleging violations of the automatic stay occurred on November
14 14, 2011 and December 23, 2011 when Respondent MERS executed and transferred
15 an assignment of the Deed of Trust, First Amended Injunction Motion at 2, ¶ 7, and 7-8,
16 ¶ 7, and Exhibit 9, is not proven by a preponderance of the evidence because at the
17 time of these alleged violations, the bankruptcy case had closed on July 8, 2011, and
18 the automatic stay had terminated as discussed above. Since no automatic stay
19 existed at the time of these alleged acts, there was no violation of stay. Debtor also
20 argues that recording the assignment of trust deed without the ownership of the
21 underlying note is invalid, First Amended Injunction Motion at 8, ¶ 7, but cites no legal
22 authority for such proposition, and offers no evidence showing that such ownership is
23 lacking in any event. The court thus determines that this argument also lacks merit.
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26 Debtor's related claim alleging violations of 11 U.S.C. § 501 occurred on
27 November 14, 2011 and December 23, 2011 when Respondent MERS executed and
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1 transferred an assignment of the Deed of Trust, resulting in a “mesne assignment”
2 where U.S. Bank and Chase were assignees and Albertelli Law Group was trustee, First
3 Amended Injunction Motion at 8-9, ¶ 9, and Exhibit 11, does not prove her claim by a
4 preponderance of the evidence because these parties did not do anything that violated
5 11 U.S.C. § 501, which relates to the filing of proofs of claim, and the complained-of act
6 was not the filing of a proof of claim. Moreover, Exhibit 11 is not properly admissible
7 because it appears to be a copy of a 2-page except of an unidentified and
8 unauthenticated property title report by an unknown third party, and the court disregards
9 Exhibit 11 as lacking proper foundation.
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11 Debtor has not proven by a preponderance of the evidence any willful violation of
12 the automatic stay by Respondent SPS. As stated previously, the automatic stay in this
13 bankruptcy case was in effect from April 27, 2008 through July 8, 2011. The court
14 agrees with Respondent SPS in its response to the OSC (Docket No. 132) that it could
15 not have violated the stay because it was not servicing the loan when the stay was in
16 effect because the only evidence in the record is that SPS began servicing the loan on
17 June 1, 2013. *Declaration of Mark Syphus in Response to Court’s Order to Show*
18 *Cause re: Contempt*, filed on April 24, 2017 (Docket No. 133) at 2.
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20 Debtor has not proven by a preponderance of the evidence any willful violation of
21 the automatic stay by Respondent Chase. Debtor’s claim that Chase violated the
22 automatic stay by its letter to her dated May 5, 2008 lacks merit because this letter does
23 not show a violation of the automatic stay against collection action because the letter
24 specifically states “This is not an attempt to persuade you to make payments to Chase.”
25 See First Amended Injunction Motion, Exhibit 13. In her First Amended Injunction
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1 Motion, Debtor otherwise fails to cite specific incidents or provide any evidence of a stay
2 violation by Chase or its affiliates.

3 Debtor has not offered evidence of a willful violation of the automatic stay by
4 Respondent Stewart. At paragraph 13 on page 9 of the First Amended Injunction
5 Motion, Debtor alleges that Stewart, which issued the title insurance policy on the
6 property in 2006, “had full knowledge of Plaintiff’s bankruptcy and had full knowledge of
7 the title defect” and that “Plaintiff notified Stewart of the fraud she encountered with the
8 loan,” and that “[u]pon information and belief, Stewart’s failure to provide either a
9 defense or indemnification as applicable with respect to Plaintiff’s policy, ‘a title defect
10 must be removed by the insurer within a reasonable time, and failure to do so renders
11 the insurer liable for the insured’s interim or mesne consequential damages.’” First
12 Amended Injunction Motion at 9. The court agrees with Respondent Stewart’s response
13 to the OSC (Docket No. 125) that the First Amended Injunction Motion does not state
14 specific stay violation allegations that relate to it since Debtor is not alleging that Stewart
15 acted in violation of the stay to enforce a prepetition claim under 11 U.S.C. § 362.
16 Besides, Debtor offered no evidence to substantiate her allegations against Stewart as
17 well.
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21 11 U.S.C. § 362(k) permits a person injured by a willful violation of the automatic
22 stay to recover actual damages, including costs and attorneys’ fees, and in appropriate
23 circumstances, may recover punitive damages. 11 U.S.C. § 362(k). As the court has
24 found that the record does not show any violation of the automatic stay by any
25 Respondent, the court should deny Debtor’s request for damages under 11 U.S.C. §
26 362(k).
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1 Assuming for the sake of argument that there was some violation of the
2 automatic stay, Debtor failed to prove by a preponderance of the evidence that she
3 sustained any damages from any stay violation. First, Debtor has not offered any
4 evidence to show any foreclosure of the trust deed securing her home loan on the
5 subject real property. Second, although Debtor asserts that she paid \$36,492.27 for
6 "loan modifications," she has not offered any evidence that she actually paid this money
7 to any Respondent. In her papers, Debtor refers to "Defendant" which is not specifically
8 named, so it is not clear which of the Respondents was culpable in collecting the
9 money. Moreover, Debtor did not offer any evidence of any such payment of
10 \$36,492.27. The court notes that Debtor's Exhibit 17 is a letter from SPS to Debtor
11 dated September 3, 2013, which has an attachment of an unsigned loan modification
12 agreement, but there is no evidence that Debtor paid the amount of \$36,492.27 as
13 contended by her on page 13 of Debtor's First Amended Injunction Motion. Debtor
14 offers no evidence that this alleged payment was the result of a violation of the
15 automatic stay in effect between April 27, 2008 and July 8, 2011. (If Debtor has not
16 paid her secured home loan since 2008 as contended by some of the Respondents
17 (see *Declaration of Mark Syphus in Response to Court's Order to Show Cause re:*
18 *Contempt*, filed on April 24, 2017 (Docket No. 133) at 2-3) and as she admitted at the
19 hearing, it is not clear that there was anything wrongful by the lender in collecting any
20 loan modification payments on the secured home loan, even if modified.) Finally,
21 Debtor's claim that she had to pay attorneys' fees is not supported by sufficient
22 evidence to constitute a prima facie showing of such a claim because she offers no
23 evidence that (1) she ever paid any such attorneys' fees and (2) that such fees were
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1 incurred as a result of a violation of the automatic stay. First Amended Injunction
2 Motion at 13-14.

3 For the foregoing reasons, the court finds that Debtor has not proven by the
4 preponderance of the evidence under 11 U.S.C. § 362(k) that any Respondent willfully
5 violated the automatic stay in this case and that Debtor failed to offer sufficient evidence
6 to make a prima facie showing that clear and convincing evidence establishes her
7 claims for contempt that any Respondent willfully violated the automatic stay.
8 Accordingly, the court will deny Debtor's claims under 11 U.S.C. § 362(k) and for
9 contempt based on alleged violations of the automatic stay.
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11 **The court determines that Debtor has not proven by clear and convincing**
12 **evidence that Respondents acted in violation of the discharge injunction in**
13 **contempt of court.**

14 11 U.S.C. § 524(a)(2) "operates as an injunction against the commencement or
15 continuation of an action, the employment of process, or an act, to collect, recover or
16 offset any such debt as a personal liability of the debtor." 11 U.S.C. § 524(a)(2). Civil
17 contempt is the appropriate remedy for the violation of the discharge injunction. *Wells*
18 *v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 507 (9th Cir. 2002). Debtor has the burden of
19 proving by clear and convincing evidence that the offending creditor knowingly and
20 willfully violated the discharge injunction. *In re Kabiling*, 551 B.R. 440, 444-445 (9th Cir.
21 BAP 2016), *citing*, *ZiLog, Inc. v. Corning (In re ZiLog, Inc.)*, 450 F.3d 996, 1007 (9th Cir.
22 2006). "The offending creditor acts knowingly and willfully if (1) it knew the discharge
23 injunction was applicable and (2) it intended the actions which violated the injunction."
24 *Id.*
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1 With respect to the first element of knowledge on Debtor's claim for contempt
2 based on a violation of the discharge injunction, a creditor cannot be held in contempt
3 for violating the discharge injunction unless the creditor had actual knowledge of the
4 injunction. *Id.* With respect to the second element of intent, courts apply the same
5 analysis regarding violations of the discharge injunction as they do with violations of the
6 automatic stay. *Id.* "The focus is on whether the creditor's conduct violated the
7 injunction and whether that conduct was intentional; it does not require a specific intent
8 to violate the injunction." *Id.* (citations omitted).

10 In determining whether Debtor has proven the first element of knowledge on
11 Debtor's contempt claim based on a discharge injunction violation, the evidence offered
12 by Debtor only shows that Chase was the only Respondent potentially aware of the
13 discharge injunction. However, in determining whether Debtor has proven the second
14 element of intent on her contempt claim for violation of the discharge injunction, the
15 court finds that she offered no evidence that Chase intended to violate the injunction.
16 The evidence does not show that Chase attempted to collect and hold her *personally*
17 *liable* for any of the outstanding home loan debt in violation of the discharge injunction.
18 In fact, the evidence shows the contrary as Debtor acknowledged in her First Amended
19 Injunction Motion that the monthly letters Chase sent to her stated that they were for
20 "informational purposes only" and did "not constitute an attempt to collect a debt or to
21 impose personal liability for such obligation." First Amended Injunction Motion at 13,
22 lines 9-11. Since Chase was not seeking to hold Debtor personally liable for the
23 discharged debt, the court finds that Debtor's evidence does not make a prima facie
24 showing that Chase violated the discharge injunction with the intent to violate it.
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1 A creditor having a secured lien against Debtor's residence may enforce its rights
2 to enforce the lien. See 11 U.S.C. § 524(j); *Johnson v. Home State Bank*, 501 U.S. 78,
3 84 (1991); *In re Isom*, 901 F.2d 744, 745 (9th Cir. 1990). Respondent U.S. Bank has a
4 colorable claim as the current holder of the lien to secure the home loan taken out by
5 Debtor as indicated by the evidence, which includes the deed of trust signed by Debtor
6 and the recorded assignments of the deed of trust to U.S. Bank. *Declaration of Mark*
7 *Syphus in Response to Court's Order to Show Cause re: Contempt*, filed on April 24,
8 2017 (Docket No. 133) at 1-3; *Request of Respondents SPS and MERS for Judicial*
9 *Notice*, filed on April 24, 2017 (Docket No. 134) at 2-3 and Exhibit A attached thereto;
10 *Debtor's Exhibits 5, 9 and 10*.

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12
13 The bankruptcy discharge under 11 U.S.C. § 524 "operates as an injunction
14 against . . . the employment of process, or an act, to collect, recover, or offset any
15 [discharged] debt as a personal liability of the debtor . . ." 11 U.S.C. § 524(a).
16 However, "a bankruptcy discharge extinguishes only one mode of enforcing a claim—
17 namely, an action against the debtor *in personam* [i.e., as against the debtor personally]
18 —while leaving intact another—namely, an action against the debtor *in rem* [i.e., as
19 against the property of the debtor]. *Johnson v. Home State Bank*, 501 U.S. at 84. "[A]
20 discharge in bankruptcy prevents the [creditor] from taking an action to collect the debt
21 as a personal liability of the debtor . . . however, [the debtor's] property remains liable
22 for a debt secured by a valid lien." *In re Isom*, 901 F.2d at 745 (citations omitted). Once
23 the automatic stay has terminated, a creditor with a valid lien against property of the
24 debtor as collateral may proceed against such collateral securing its lien even though
25 the creditor cannot proceed against the debtor personally. *In re Dickinson*, 24 B.R. 547,
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1 550 (Bankr. S.D. Cal. 1982)(citations omitted).

2 In reviewing Debtor's evidences, the court finds that she offered no evidence that
3 Respondents Stewart, SPS, MERS, U.S. Bank, Albertelli Law Group, and Quality Loan
4 Service Corporation were aware of the discharge injunction, and thus, the court further
5 finds that Debtor has not proven by clear and convincing evidence that any of these
6 Respondents were aware of the discharge injunction to support a finding of contempt.
7 Accordingly, the court determines that Debtor has failed to prove that any of these
8 Respondents can be held in contempt for violating the discharge injunction.
9

10 For the foregoing reasons, because the evidence does not show by clear and
11 convincing evidence demonstrates that any Respondent willfully violated the discharge
12 injunction, the court will deny Debtor's claims for contempt based on alleged violations
13 of the discharge injunction.
14

15 **The court determines that service of the First Amended Injunction Motion**
16 **on Respondents U.S. Bank National Association, Quality Loan Servicing,**
17 **Inc., and Albertelli Law Group was insufficient.**

18 Debtor's proof of service of the First Amended Injunction Motion (Docket No.
19 120), filed on March 22, 2017, indicates that Respondent U.S. Bank National
20 Association, a depository institution insured with the Federal Deposit Insurance
21 Corporation (FDIC), was not properly served with the First Amended Injunction Motion
22 because the proof of service does not indicate that the First Amended Injunction Motion
23 was mailed to it at a publicly recognized address, such as its address listed on the FDIC
24 Bank Find website in Cincinnati, Ohio, and service was not addressed to the attention of
25 an officer or agent for service of process as required by Federal Rules of Bankruptcy
26 Procedure 7004(h) and 9014. Accordingly, the court will deny the Motion as to this
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28

1 Respondent for insufficient service of process.

2 Debtor's proof of service of the First Amended Injunction Motion indicates that
3 Respondent Quality Loan Service Corporation in the First Amended Injunction Motion,
4 was not properly served with the First Amended Injunction Motion because the proof of
5 service does not indicate that the First Amended Injunction Motion was mailed to it to
6 the attention of an officer or agent for service of process as required by Federal Rules of
7 Bankruptcy Procedure 7004(a)(3) and 9014. Accordingly, the court will deny the Motion
8 as to this Respondent for insufficient service of process.
9

10 Debtor's proof of service of the First Amended Motion in an errata to the original
11 proof of service (Docket No. 123), filed on March 29, 2017, indicates that Respondent
12 Albertelli Law Group was not properly served with the First Amended Injunction Motion.
13 Debtor contends that she served the Albertelli Law Group based on information on the
14 California Secretary of State's website, but this website does not show an Albertelli Law
15 Group as a registered entity. Debtor's proof of service (errata) indicates that Debtor
16 served Albertelli Law Partners, which according to the California Secretary of State's
17 website was incorporated in 2013 and dissolved in 2015. There is no evidence that this
18 entity is the same entity as Albertelli Law Group, one of the named respondents, or it
19 had anything to do with this matter since it was only incorporated in 2013 and dissolved
20 in 2015, and most of the acts at issue in this matter occurred before this time period.
21 Moreover, service on a dissolved entity is not effective. Accordingly, the Motion is
22 denied as to Respondent Albertelli Law Group for insufficient service of process.
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25 Accordingly, the court will deny Debtor's claims under 11 U.S.C. § 362(k) and for
26 contempt against Respondents U.S. Bank National Association, Quality Loan Servicing
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1 Inc., and Albertelli Law Group for insufficient service of process.

2 A separate order denying relief will follow.

3 IT IS SO ORDERED.

4 ###

25 Date: June 29, 2017



Robert Kwan
United States Bankruptcy Judge